

DEC 07 2006

PTO/SB/64 (09-06)

Approved for use through 03/31/2007. OMB 0651-0031

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**Docket Number (Optional)
3707 (LC 0101 PUS)

First named inventor: JEFFREY RICE, ET AL.

Application No.: 10/085 639

Art Unit: 1771

Filed: NOVEMBER 5, 2002

Examiner: CHERYL ANN JUSKA

Title: RECYCLABLE, RUBBER-LIKE THERMOPLASTIC BACKING MATERIAL USED IN A THROW-IN MAT FOR A VEHICLE FLOOR

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300NOTE: If information or assistance is needed in completing this form, please contact Petitions
Information at (571) 272-3282.The above-identified application became abandoned for failure to file a timely and proper reply to a notice or
action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration
date of the period set for reply in the office notice or action plus an extensions of time actually obtained.**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications
filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee☐ Small entity-fee \$ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.☒ Other than small entity - fee \$ 1500.00 (37 CFR 1.17(m))**2. Reply and/or fee**A. The reply and/or fee to the above-noted Office action in
the form of Fourth Corrected Brief on Appeal (identify type of reply):

- ☒ has been filed previously on November 22, 2006.
- ☐ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____.

- ☐ has been paid previously on _____.
- ☐ is enclosed herewith.

(Page 1 of 2)

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (II)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Steven W. Hays
Signature

December 7, 2006

Date

Steven W. Hays

41,823

Typed or printed name

Registration Number, if applicable

28333 Telegraph Road, Suite 250

248-223-9500

Address

Telephone Number

Southfield, MI 48034

Address

Enclosures: ☒ Fee Payment☒ Reply☐ Terminal Disclaimer Form☐ Additional sheets containing statements establishing unintentional delay☒ Other: Copy of Court Corrected Brief on Appeal filed via facsimile on 11/22/2006**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☒ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

December 7, 2006

Date

Angie Moscovitz
Signature

Typed or printed name of person signing certificate

DEC 07 2006

PTO/SB/17 (01-08)

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Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL
For FY 2006☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 1500.00

Complete if Known

Application Number	10/065,639
Filing Date	November 5, 2002
First Named Inventor	Jeffrey Rice, et al.
Examiner Name	Cheryl Ann Juska
Art Unit	1771
Attorney Docket No.	3707 (LC 0101 PUS)

METHOD OF PAYMENT (check all that apply)
☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☒ Deposit Account Deposit Account Number: 50-0476 Deposit Account Name: John A. Artz, P.C.

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Charge fee(s) indicated below, except for the filing fee
☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

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FEE CALCULATION (All the fees below are due upon filing or may be subject to a surcharge.)**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180
Total Claims	Extra Claims	Fee (\$)
- 20 or HP = _____ x _____ = _____		
HP = highest number of total claims paid for, if greater than 20.		
Indep. Claims	Extra Claims	Fee (\$)
- 3 or HP = _____ x _____ = _____		
HP = highest number of independent claims paid for, if greater than 3.		

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

<u>Total Sheets</u>	<u>Extra Sheets</u>	<u>Number of each additional 50 or fraction thereof</u>	<u>Fee (\$)</u>	<u>Fees Paid (\$)</u>
- 100 = _____	/ 50 = _____	(round up to a whole number) x _____	= _____	

4. OTHER FEE(S)

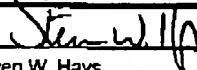
Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Petition for Revival of an Application for Patent Abandoned Unintentionally

Fees Paid (\$)

\$1500.00

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 41,823	Telephone 248-223-9500
Name (Print/Type)	Steven W. Hays		Date December 7, 2006

This collection of information is required by 37 CFR 1.138. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PATENT**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Jeffrey Rice, et al.

Serial No.: 10/065,639

Examiner: Cheryl Ann Juska

Filed: November 5, 2002

Group Art Unit: 1771

For: RECYCLABLE, RUBBER-LIKE THERMOPLASTIC BACKING
MATERIAL USED IN A THROW-IN MAT FOR A VEHICLE FLOOR

Attorney Docket No.: 3707 (LC 0101 PUS)

CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. § 1.8(a))

I hereby certify that this correspondence is, on the date shown below, being transmitted by facsimile to (571) 273-8300 (Centralized Facsimile Number).


Signature

Date: December 7, 2006

Angie Moscovitz

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**Mail Stop Petitions
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants petition that the abandonment set forth in the notice mailed by the Patent Office on November 16, 2006, be withdrawn.

- 1 -
(10/065,639)

DEC 07 2006

STATEMENT

The undersigned attests that Applicants submitted a Fourth Corrected Brief on Appeal on November 22, 2006. A copy of the Fourth Corrected Brief on Appeal is submitted herewith.

When the Notification of Non-Compliant Appeal Brief was received, Applicants immediately took the necessary steps to correct and file a Fourth Corrected Brief on Appeal. Because the Notification of Non-Compliant Appeal Brief and Notice of Abandonment were issued as one document, Applicants believed that the Notice of Abandonment would only be in effect if Applicants did not respond to the Notification of Non-Compliant Appeal Brief. On December 6, 2006, Applicants were informed via telephone from the Primary Examiner, Ms. Cheryl Ann Juska, that it was also necessary to file a Petition as well as the Fourth Corrected Brief on Appeal. Therefore, Applicants submit this Petition to set aside the abandonment of this application as Applicants have now fully complied with the proper Appeal Brief requirements.

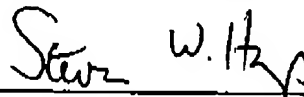
PETITION AND PETITION FEE

Applicants' attorney hereby petitions the Office to withdraw the Notice of Abandonment for failure to respond to the Notification of Non-Compliant Appeal Brief of November 16, 2006, as Applicants have submitted a Fourth Corrected Brief on Appeal in response to that Notice on November 22, 2006.

Applicants also authorize the Office to charge the petition fee of \$1500.00 required therefor under 37 C.F.R. 1.17(h) to Deposit Account 50-0476. The Office is also authorized to charge any additional fees which may be required for this purpose or credit any overpayment to Deposit Account 50-0476 in the name of John A. Artz, P.C.

Respectfully submitted,

Dated: December 7, 2006



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- 2 -

(10/065,639)

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DEC 07 2006

PATENT**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant: Jeffrey Rice, et al.

Serial No.: 10/065,639

Examiner: Cheryl Ann Juska

Filed: November 5, 2002

Group Art Unit: 1771

For: RECYCLABLE, RUBBER-LIKE THERMOPLASTIC BACKING
MATERIAL USED IN A THROW-IN MAT FOR A VEHICLE FLOOR

Attorney Docket No.: 3707 (LC 0101 PUS)

CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. § 1.8(a))

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Date: November 22, 2006Angie Moscovitz**FOURTH CORRECTED BRIEF ON APPEAL**Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Madam:

The following Fourth Corrected Appeal Brief is submitted pursuant to the Notification of Non-Compliant Appeal Brief and Notice of Abandonment, mailed November 16, 2006, and allowing thirty days for response. Appellants believe that

U.S.S.N. 10/065,639

-2-

LC 0101 PA

the foregoing amendment corrects the issues listed in Paragraphs 7 of the Notice of Abandonment and in Paragraphs 2 and 10 of the Notice of Non-Compliant Appeal Brief that are believed to be defective for failure to comply with 37 C.F.R. 41.37.

The Examiner has noted that the Applicants Appeal Brief does not comply with Paragraph 2 of the Decision of Non-Compliant Appeal Brief as allegedly not containing a statement as to the status of all claims, or does not identify the appealed claims. Applicants have herein amended Section III below to include a statement regarding the claims withdrawn (claims 1-11) or cancelled (claims 18 and 20). Removal of this ground for rejecting the Appeal Brief is respectfully requested.

I. Real Party in Interest 37 CFR 41.37(c)(i)

The real party in interest in this matter is Lear Corporation organized under the laws of the State of Delaware and having its principal place of business in Southfield, Michigan (hereinafter "Lear").

II. Related Appeals and Interferences 37 CFR 41.37(c)(II)

There are no other known appeals or interferences that will directly affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

III. Status of the Claims 37 CFR 41.37(c)(iii)

Claims 12-17 and 19 and 21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hudkins et al. (U.S. Patent No. 6,296,733) in view of Bell et al. (U.S. Patent No. 6,787,593) in the Final Office Action and claims 12-17 and 19 and 21 are presented in this appeal. Claims 1-11 stand withdrawn from consideration. Claims 18 and 20 stand cancelled. This statement fully complies with the requirements of 37 CFR 41.37 (c)(1)(iii) in that it contains a statement of the claims and further identifies the appealed claims. A copy of the claims on appeal is attached as an Appendix.

U.S.S.N. 10/065,639

-3-

LC 0101 PA

IV. Status of Amendments 37 CFR 41.37(c)(iv)

An amendment was filed October 27, 2005, within the two-month period so as to invoke an advisory action. The amendment was not entered first because the Examiner believed that the proposed new limitations to the claims raised the issue of new matter.

Further, Applicants arguments were because the Examiner determined that Applicants' arguments were not unpersuasive since they were based on a non-entered amendment and further because the Examiner believed that the Applicants arguments regarding the amount of filler did not exclude the greater amount of filler disclosed in Bell, one of the prior art references.

V. Summary of Claimed Subject Matter 37 CFR 41.37(c)(v)

The present invention relates generally to a method for forming floor mats for vehicles and the like, and more particularly to a method for forming a throw-in mat having a rubber-like feel and weight.

The method for forming the recyclable throw-in mat according to a preferred embodiment of the present invention as claimed in independent claims 12 and 21 is described in paragraphs [0023] through [0027] and Figures 3-5 of the originally filed specification.

Figure 3 and paragraph [0023] describes the process for forming palletized versions of the recyclable thermoplastic backing material that are claimed in independent claims 12 and 21. The starting materials for the thermoplastic backing material used in claims 12 and 21 that is palletized is described in Table 1 and further in paragraphs [0018]-[0021] of the specification. The formed pellets formed according to the method of Figure 3 and described in paragraph [0023] are then introduced to an extruder in Figure 4 and paragraph [0024] and coupled to the primary backing layer. The coupled backing material is then rolled onto a roller. In Figure 5, and paragraphs [0025-0027], the rolled material is then cut to an appropriate size and placed in a mat press, wherein the rolled and cut material is molded under heat and pressure to allow the backing material to flow to form its

U.S.S.N. 10/065,639

-4-

LC 0101 PA

desired shape, which may include nibs and grooves. Finally, the shaped throw-in-mat is placed into a cold press to cool the material. The throw-in mat may also be subsequently trimmed to a desired shape.

Specifically, with respect to independent claim 12, and in full compliance with 37 CFR 41.37(c)(1)(v), claim 12 describes a method for forming a throw-in mat having a rubber-like feel and weight. Each individual step is described in the following paragraphs:

The preamble of claim 12 describes first a throw-in mat 10 that is shown and described on page 3, paragraph [0015], lines 1 and 2, and in Figure 2. The "forming" portion of the preamble is first described on page 3, paragraph [0014], lines 1-4, and Figures 4 and 5 and later described in more detail in Figures 4 and 5 and in the specification on page 7, beginning on the first line of paragraph [0024] and continuing on through the last line of paragraph [0027].

The first step of claim 12, namely "providing a carpet pile sewn through a first side of a primary backing layer" is first described on page 3, paragraph [0015], lines 5 and 6, and Figure 2 and later described as part of the method beginning on page 7, paragraph [0024], lines 9-11, Figures 4-5.

The second step of claim 12, namely "forming a recyclable, rubber-like thermoplastic backing material comprising an ethylene-octene copolymer formed using a metallocene catalyst" is first described on page 4, paragraph [0017], lines 1-8, and Figure 2 and later described as part of the method beginning on page 6, paragraph [0023], line 1 through page 4, line 10 and in Figure 3.

The third step of claim 12, namely "coupling said recyclable, rubber-like thermoplastic backing material to a second side of said primary backing layer to form the throw in mat, said second side being opposite of said first side" is first described on page 4, paragraph [0017], lines 1-8, and Figure 2 and later described as part of the method beginning on page 7, paragraph [0024], lines 11-14 and Figures 4-5.

U.S.S.N. 10/065,639

-5-

LC 0101 PA

The fourth step of claim 12, namely "introducing the thrown-in mat to a mat press" is shown on page 7, paragraph [0025] lines 1-3 and in Figure 5.

The fifth step of claim 12, namely "pressing the throw-in mat at a desired temperature and a desired pressure for a predetermined period of time within said mat press to form said recyclable, rubber-like thermoplastic backing material to a desired shape, said recyclable, rubber-like thermoplastic backing material including a plurality of nubs formed thereon" is shown on page 7, paragraph [0025] lines 3 through page 8, paragraph [0026] line 4 and in Figure 5.

The sixth step of claim 12, namely "removing said throw-in mat from said mat press" is shown on page 8, paragraph [0027] lines 1-2 and in Figure 5.

Finally, the last step of claim 12, namely "cooling said throw-in mat in a cold press" is shown on page 8, paragraph [0027] lines 2-4 and in Figure 5.

Specifically, with respect to independent claim 21, and in full compliance with 37 CFR 41.37(c)(1)(v), claim 21 describes a method for forming a throw-in mat having a rubber-like feel and weight. Each individual step is described in the following paragraphs:

The preamble of claim 21 describes first a throw-in mat 10 that is shown and described on page 3, paragraph [0015], lines 1 and 2, and in Figure 2. The "forming" portion of the preamble is first described on page 3, paragraph [0014], lines 1-4, and Figures 4 and 5 and later described in more detail in Figures 4 and 5 and in the specification on page 7, beginning on the first line of paragraph [0024] and continuing on through the last line of paragraph [0027].

The first step of claim 21, namely "providing a carpet pile sewn through a first side of a primary backing layer" is first described on page 3, paragraph [0015], lines 5 and 6, and Figure 2 and later described as part of the method beginning on page 7, paragraph [0024], lines 9-11, Figures 4-5.

U.S.S.N. 10/065,639

-6-

LC 0101 PA

The second step of claim 21, namely "forming a recyclable, rubber-like thermoplastic backing material comprising an ethylene-octene copolymer formed using a metallocene catalyst; wherein said ethylene-octene copolymer formed using a metallocene catalyst comprises a first ethylene-octene copolymer formed using a metallocene catalyst and having a melt index of approximately 25-35 and a density of approximately 0.7 to 1.0 and a second ethylene-octene copolymer formed using said metallocene catalyst and having a melt index of approximately 2-4 and a density of approximately 0.7 to 1.0" is first described on page 4, paragraph [0017], lines 1-8, and Figure 2 and later described as part of the method beginning on page 6, paragraph [0023], line 1 through page 4, line 10 and in Figure 3. The details regarding the first and second ethylene-octene copolymer are fully described on page 5, paragraph [0020], lines 1-3 and in the accompanying Table 1 set forth in the middle of page 5.

The third step of claim 21, namely "coupling said recyclable, rubber-like thermoplastic backing material to a second side of said primary backing layer to form the throw in mat, said second side being opposite of said first side" is first described on page 4, paragraph [0017], lines 1-8, and Figure 2 and later described as part of the method beginning on page 7, paragraph [0024], lines 11-14 and Figures 4-5.

The fourth step of claim 21, namely "introducing the thrown-in mat to a mat press" is shown on page 7, paragraph [0025] lines 1-3 and in Figure 5.

The fifth step of claim 21, namely "pressing the throw-in mat at a desired temperature and a desired pressure for a predetermined period of time within said mat press to form said recyclable, rubber-like thermoplastic backing material to a desired shape, said recyclable, rubber-like thermoplastic backing material including a plurality of nubs formed thereon" is shown on page 7, paragraph [0025] lines 3 through page 8, paragraph [0026] line 4 and in Figure 5.

The sixth step of claim 21, namely "removing said throw-in mat from said mat press" is shown on page 8, paragraph [0027] lines 1-2 and in Figure 5.

U.S.S.N. 10/065,639

-7-

LC 0101 PA

Finally, the last step of claim 21, namely "cooling said throw-in mat in a cold press" is shown on page 8, paragraph [0027] lines 2-4 and in Figure 5.

Applicants believe that the above "roadmaps" for the independent claims 12 and 21, which are described above in terms of the specification by page and line number and to the drawings, fully complies with 37 CFR 41.37(c)(1)(v).

VI. Grounds of Rejection to be Reviewed on Appeal 37 CFR 41.37(c)(vi)

The following issues are presented in this appeal, each of which corresponds directly to the Examiner's final grounds for rejection and the Final Office Action dated July 6, 2005, and in the Advisory Action dated September 20, 2005:

- (a) Whether claims 12-17, 19 and 21 are patentable under 35 U.S.C. §103(a) over United States Patent No. 6,296,733 to Hudkins et al. in view of United States Patent No. 6,787,593 to Bell et al.?

VII. Argument 37 CFR 41.37(c)(vii)

THE REJECTION OF CLAIMS 12 17, 19 And 21 UNDER 35 U.S.C. §103(a)

Claims 12-17 and 19 and 21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hudkins et al. (U.S. Patent No. 6,296,733) in view of Bell et al. (U.S. Patent No. 6,787,593). Applicants respectfully traverse the Examiner's rejection. Each claim will be addressed separately below:

Claim 12

In the September 16, 2005 Response to Arguments, the Examiner first states that the declaration submitted by Applicants on July 7, 2005 was not commensurate with the scope of the claims in that the claims do not require completely formed nibs that do not break off easily during use. Applicants respectfully disagree. Focusing first on the phrase "completely formed nibs," Applicants note amended claim 12 specifically calls out a plurality of nibs as of the entered July 7, 2005 amendment. Moreover, Figure 2 of the originally filed drawings clearly shows completely formed nibs as reference numeral 26. Thus, the nibs described in amended claim 12 are

U.S.S.N. 10/065,639

-8-

LC 0101 PA

completely formed nibs. The Examiner's suggestion in her September 16, 2005 Response that claim 12 does not require completely formed nibs goes against the very teachings of the patent as described in the specification and drawings and must not be allowed to stand. Thus, the Examiner's determination that amended claim 12 does not require completely formed nibs is improper and must be overturned.

Focusing next on the phrase "that do not break off easily during use," Applicants first note that amended claim 12 requires that the backing material, which includes a plurality of nibs, be rubber-like. A rubber-like material, in and of itself, implies a material that is bendable and does not break easily as it is bent. As such, Applicants respectfully suggest that the phrase rubber-like implies a material that does not break easily.

The Examiner further has stated that amended claim 12 does not exclude the greater presence of filler found in the Bell reference, and thus the combination of Hudkins and Bell obviates the present invention under 35 U.S.C. §103(a). Applicants respectfully disagree. The composition of the backing material in amended claim 12 is rubber-like and must have melt flow characteristics to achieve completely formed nibs thereon to achieve such a rubber-like state. The Bell reference requires an ethylene-octene copolymer having a melt index between 1 and 10 and a substantial amount of filler in order to achieve sound deadening characteristics (i.e. a much greater than any range of filler taught in the present invention). As one of ordinary skill recognizes, the Bell references does not form a rubber-like material. Further, the introduction of this additional amount of filler in Bell would disrupt the flow characteristics of the ethylene-octene copolymer such that they could not form complete nibs as described in the present invention. Moreover, the incompletely formed nibs have a tendency to break off more easily as compared with completely formed nibs. Finally, the highly filled nature of the polymer in Bell affects the mechanical properties of the matting, resulting in nibs would also tend to break off more easily for this reason. Applicants have thus concluded that the polymer described in Bell, in combination with Hudkins, would result in a mat that is not rubber-like in character and further could not be formed with complete nibs from a processing standpoint as in amended claim 12. Further, the Applicants concluded

U.S.S.N. 10/065,639

-9-

LC 0101 PA

that any nibs that could be formed with the material of Bell would at best be incomplete and would break off easily. This is the substance of Applicants Declaration and the basis of Applicant's argument that Bell does not disclose an ethylene-octene composition cured with a metallocene catalyst that is capable of forming a rubber-like backing material as in amended claim 12 of the present invention. Thus, contrary to the Examiner's determination, amended claim 12 specifically excludes the amount of filler present in Bell. As such, the Examiner has not established the third of three criteria for establishing a *prima facie* case of obviousness under MPEP 2143, namely the Examiner has not established that the combination of Hudkins and Bell teaches all of the claim limitations of amended claim 12. "When the references cited by the Examiner fail to establish a *prima facie* case of obviousness, the rejection is improper and will be overturned."¹ As such, the rejection of amended claim 12 is improper and must be overturned. Reconsideration of claim 12 is thus respectfully requested.

Claim 13

Claim 13 is a dependent claim of claim 12 that further limits the method for forming a rubber-like thermoplastic backing. For reasons stated with respect to amended claim 12, Bell does not disclose an ethylene-octene composition cured with a metallocene catalyst that is capable of forming a rubber-like backing material as in claim 13 of the present invention. Reconsideration of claim 13 is thus respectfully requested.

Claim 14

Claim 14 is a dependent claim of amended claim 12 that further limits the composition of the rubber-like thermoplastic backing material to an ethylene-octene copolymer formed using a metallocene catalyst and having a melt index of approximately 25-35 and a density of approximately 0.7 to 1.0. Bell does not teach this melt index range. As such, the Examiner has additionally not established a *prima facie* case of obviousness as required by Section 2143. Applicants further note that the addition of a copolymer having this melt index range was not and likely

¹ *In re Ochiai*, 71 F.3d 1585, 37 U.S.P.Q.2d 1127 (Fed. Cir. 1995), citing *In re Fing*, 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

U.S.S.N. 10/065,639

-10-

LC 0101 PA

would not be contemplated in Bell, in that such a range would negatively impact the sound absorbing capabilities in Bell while meeting the demand of balanced properties of impact strength, tensile, elongation, flex modulus and specific gravity and also satisfy the requirements of resistance to cold, mildew fogging and flammability. Thus, for reasons stated above with respect to amended claim 12 and for the additional reasons stated in this paragraph, claim 14 is not obvious over Hudkins in view of Bell, contrary to the Examiner's conclusion. Reconsideration of claim 14 is thus requested for these additional reasons.

Claim 15

Claim 15 is a dependent claim of claim 14 that further that further limits the composition of the rubber-like thermoplastic backing material to also include a second ethylene-octene copolymer formed using said metallocene catalyst and having a melt index of approximately 2-4 and a density of approximately 0.7 to 1.0. For reasons stated above with respect to claim 14, the combination of Hudkins and Bell does not teach a rubber-like thermoplastic backing material that includes an ethylene-octene copolymer formed using a metallocene catalyst and having a melt index of approximately 25-35. Moreover, the combination of Hudkins and Bell does not teach a mixture of ethylene-octene copolymers, one having a melt index of between 25 and 35, the other having a melt index between about 2 and 4, as in claim 15. Thus, for reasons stated above with respect to claims 12 and 14 and for the additional reasons stated in this paragraph, claim 15 is not obvious over Hudkins in view of Bell, contrary to the Examiner's conclusion. Reconsideration of claim 14 is thus requested for these additional reasons.

Claim 16

Claim 16 is a dependent claim from claim 13 that further limits the step of introducing a plurality of raw materials to a mixing device and mixing said plurality of raw materials. For reasons stated with respect to claims 12 and 13, Bell does not disclose an ethylene-octene composition cured with a metallocene catalyst that is capable of forming a rubber-like backing material as in claim 16 of the present invention. Reconsideration of claim 16 is thus respectfully requested.

U.S.S.N. 10/065,639

-11-

LC 0101 PA

Claim 17

Claim 17 is a dependent claim from claim 16 that further limits the temperature for forcing the recyclable, rubber-like thermoplastic backing material out of a bottom of an extruder to between approximately 165 and 185 degrees Celsius. For reasons stated with respect to claims 12 and 13 and 16, Bell does not disclose an ethylene-octene composition cured with a metallocene catalyst that is capable of forming a rubber-like backing material as in claim 17 of the present invention. Reconsideration of claim 17 is thus respectfully requested.

Claim 19

Claim 19 is a dependent claim from claim 12 that further limits pressing the throw-in mat to desired temperature between approximately 165 and 185 degrees Celsius and limits the pressing time to approximately 20 seconds. For reasons stated with respect to amended claim 12, Bell does not disclose an ethylene-octene composition cured with a metallocene catalyst that is capable of forming a rubber-like backing material as in claim 19 of the present invention. Reconsideration of claim 19 is thus respectfully requested.

Claim 21

Claim 21 is an independent method claim similar to claim 12 that includes the step of forming a recyclable, rubber-like thermoplastic backing material comprising an ethylene-octene copolymer formed using a metallocene catalyst; wherein said ethylene-octene copolymer formed using a metallocene catalyst comprises a first ethylene-octene copolymer formed using a metallocene catalyst and having a melt index of approximately 25-35 and a density of approximately 0.7 to 1.0 and a second ethylene-octene copolymer formed using said metallocene catalyst and having a melt index of approximately 2-4 and a density of approximately 0.7 to 1.0. Bell does not teach a material having a melt index range of between 25 and 35.. As such, the Examiner has additionally not established a *prima facie* case of obviousness as required by Section 2143. Applicants further note that the addition of a copolymer having this melt index range was not and likely would not be contemplated in Bell, in that such a range would negatively impact the sound absorbing capabilities in Bell while meeting the demand of balanced properties of impact strength, tensile,

U.S.S.N. 10/065,639

-12-

LC 0101 PA

elongation, flex modulus and specific gravity and also satisfy the requirements of resistance to cold, mildew fogging and flammability. Reconsideration of claim 21 is thus requested for these additional reasons.

VIII. Claims Appendix 37 CFR 41.37(c)(viii)

A copy of each of the claims involved in this appeal, namely claims 12-17, 19 and 21 is attached hereto as Appendix A.

IX. Evidence Appendix 37 CFR 41.37(c)(ix)

None.

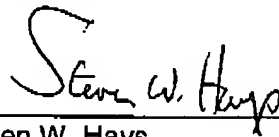
X. Related Proceedings Appendix 37 CFR 41.37(c)(x)

None.

X. Conclusion

For the foregoing reasons, Applicant respectfully requests that the Board direct the Examiner in charge of this examination to withdraw the rejections and pass claims 12-17, 19 and 21 to issuance.

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U.S.S.N. 10/065,639

-13-

LC 0101 PA

APPENDIX A

12. A method for forming a throw-in mat having a rubber-like feel and weight, the method comprising:

providing a carpet pile sewn through a first side of a primary backing layer;

forming a recyclable, rubber-like thermoplastic backing material comprising an ethylene-octene copolymer formed using a metallocene catalyst;

coupling said recyclable, rubber-like thermoplastic backing material to a second side of said primary backing layer to form the throw in mat, said second side being opposite of said first side;

introducing the thrown-in mat to a mat press;

pressing the throw-in mat at a desired temperature and a desired pressure for a predetermined period of time within said mat press to form said recyclable, rubber-like thermoplastic backing material to a desired shape, said recyclable, rubber-like thermoplastic backing material including a plurality of nibs formed thereon;

removing said throw-in mat from said mat press; and

cooling said throw-in mat in a cold press.

13. The method of claim 12, wherein forming a rubber-like thermoplastic backing material comprises:

introducing a recyclable, rubber-like thermoplastic material comprising an ethylene-octene copolymer formed using a metallocene catalyst to a mixing device;

introducing a plurality of raw materials to a mixing device after the introduction of said recyclable, rubber-like thermoplastic material, said plurality of raw materials selected from the group consisting of a plasticizer, an additive, a thermoplastic additive, and a filler; and

mixing said plurality of raw materials and said recyclable, rubber-like thermoplastic material within said mixing device to form a recyclable, rubber-like thermoplastic backing material.

U.S.S.N. 10/065,639

-14-

LC 0101 PA

14. The method of claim 13, wherein said ethylene-octene copolymer formed using a metallocene catalyst comprises a first ethylene-octene copolymer formed using a metallocene catalyst and having a melt index of approximately 25-35 and a density of approximately 0.7 to 1.0.

15. The method of claim 14, wherein said ethylene-octene copolymer formed using a metallocene catalyst further comprises a second ethylene-octene copolymer formed using said metallocene catalyst and having a melt index of approximately 2-4 and a density of approximately 0.7 to 1.0.

16. The method of claim 13, introducing a plurality of raw materials to a mixing device and mixing said plurality of raw materials comprises:

introducing a recyclable, rubber-like thermoplastic material comprising an ethylene-octene copolymer formed using a metallocene catalyst to a loss in weight feeder;

introducing a plurality of raw materials to a loss in weight feeder after the introduction of said recyclable, rubber-like thermoplastic material, said plurality of raw materials selected from the group consisting of a plasticizer, an additive, a thermoplastic additive, and a filler;

feeding said plurality of raw materials and said recyclable, rubber-like thermoplastic material from said loss in weight feeder to a continuous mixer;

mixing said plurality of raw materials and said recyclable, rubber-like thermoplastic material within said mixer to form a mixture;

introducing said mixture to an extruder;

extruding said mixture in said extruder to form an extruded material;

pelletizing said extruded material with an underwater pelletizer to form a plurality of pellets;

introducing at least one of said plurality of pellets to an extruder;

melting said at least one of said plurality of pellets to form a recyclable, rubber-like thermoplastic backing material; and

forcing said recyclable, rubber-like thermoplastic backing material out of a bottom of said extruder at a desired temperature.

U.S.S.N. 10/065,639

-15-

LC 0101 PA

17. The method of claim 16, wherein said desired temperature is between approximately 165 and 185 degrees Celsius.

19. The method of claim 12, wherein said desired temperature is between approximately 165 and 185 degrees Celsius and said predetermined period of time is approximately 20 seconds.

21. A method for forming a throw-in mat having a rubber-like feel and weight, the method comprising:

providing a carpet pile sewn through a first side of a primary backing layer;

forming a recyclable, rubber-like thermoplastic backing material comprising an ethylene-octene copolymer formed using a metallocene catalyst; wherein said ethylene-octene copolymer formed using a metallocene catalyst comprises a first ethylene-octene copolymer formed using a metallocene catalyst and having a melt index of approximately 25-35 and a density of approximately 0.7 to 1.0 and a second ethylene-octene copolymer formed using said metallocene catalyst and having a melt index of approximately 2-4 and a density of approximately 0.7 to 1.0;

coupling said recyclable, rubber-like thermoplastic backing material to a second side of said primary backing layer to form the throw in mat, said second side being opposite of said first side;

introducing the thrown-in mat to a mat press;

pressing the throw-in mat at a desired temperature and a desired pressure for a predetermined period of time within said mat press to form said recyclable, rubber-like thermoplastic backing material to a desired shape, said recyclable, rubber-like thermoplastic backing material including a plurality of ribs formed thereon;

removing said throw-in mat from said mat press; and
cooling said throw-in mat in a cold press.